

APOLLO DRILLING & EXPLORATION, INC.

IBLA 72-382

Decided March 8, 1973

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer (simultaneous oil and gas drawing entry card) W 33824 for Parcel 133.

Affirmed.

Oil and Gas Leases: Applications: Generally

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or a reference by serial number to a record in which such statement previously had been filed.

APPEARANCES: W. F. Drew, Esq., of Brown, Drew, Apostolos, Barton & Massey, Casper, Wyoming, for appellant.

OPINION BY MRS. LEWIS

Apollo Drilling & Exploration, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated April 3, 1972, rejecting its oil and gas lease offer W 33824 for Parcel 133. The offer was rejected for failure to file with the entry card a statement of corporate qualifications, or a reference by serial number to a record wherein such statement previously had been filed, as required by 43 CFR 3102.4-1, formerly 43 CFR 3123.2(g).

Apollo asserts that it made its offer for Parcel 133 on a simultaneous oil and gas drawing entry card which made no reference to 43 CFR 3102.4-1, cited in the decision appealed from, and that the only regulation referred to on the entry card is 43 CFR 3123.2. Appellant submits that there is not now, and was not at the time its lease offer was filed, any regulation codified as 43 CFR 3123.2, but rather the applicable regulation was 43 CFR 3102.4-1. Appellant also asserts on appeal that its corporate qualifications are on file under W 763. It now requests that its reference to this material in its appeal be accepted and a lease issue.

Appellant's lease offer was filed in the Wyoming Land Office on February 28, 1972, on a simultaneous oil and gas drawing entry

card, "Form 3120-21 (December 1968)." On the reverse side of the entry card there is printed a caution: "NOTE: Compliance must be made with the provisions of 43 CFR 3123.2." The cited regulation sets forth the information that must accompany an oil and gas lease offer when it is filed. The applicable portion, subparagraph (g), now designated 43 CFR 3102.4-1, provides:

If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

The unchanged substantive language of the regulation is clear and unequivocal. Where the necessary corporate qualifications papers are not filed with the offer or the appropriate reference is not made to a case record where such showings previously have been filed, the oil and gas offer does not comply with the mandatory provisions of the regulation and must be rejected. Pan Ocean Oil Corporation, 2 IBLA 156 (1971); The Polumbus Corporation, 8 IBLA 84 (1972).

In regard to appellant's main assertion, this Board in an identical situation held that the offeror is deemed to be charged with knowledge of the change in the numbering of the regulation. In Pan Ocean Oil Corporation, *supra*, 158-9, the Board said:

* * * On June 13, 1970, a recodification and redesignation of the regulations of the Department of the Interior relating to lands administered by the Bureau of Land Management, contained in Chapter II of Title 43 of the Code of Federal Regulations, were published in Volume 35, Number 115 of the Federal Register. The Federal Register Act, 49 Stat. 500, as amended; 44 U.S.C. § 301 (1964) provides that publication of regulations in the Federal Register is deemed to be constructive notice of their

content. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Hotch v. United States, 212 F.2d 280 (9th Cir. 1954). Appellant, therefore, cannot plead ignorance of the publication in the Federal Register. It is charged with constructive notice of the reorganization and designation of the regulations governing its oil and gas lease offer in this case. The fact that the applicable portion of 43 CFR 3123.2 has been renumbered and rearranged destroys neither its existence nor its clarity. Further it is specifically stated in the introduction to the redesignation table (Volume 35 Federal Register 9502) that "the reorganization and redesignation are effective upon publication in the Federal Register. It is the Department's intention in this revision to make no substantive changes in the regulations."

The redesignation table which follows these introductory remarks on pages 9502-9511 of Volume 35 of the Federal Register is relatively easy to comprehend. 1/ Any diligent applicant could ascertain which regulatory requirements apply to his specific circumstances with a minimum of effort. Compliance with these regulations is not excused, nor are the regulations rendered ambiguous merely because forms in current usage refer to them by their previous numbers.

Accordingly, since Apollo failed to comply with the mandatory provisions of the regulation cited on the entry card, which required it to supply corporate qualification information or make appropriate reference to its earlier filing of the information when its offer was first filed, we find that the Wyoming State Office properly rejected the drawing entry card lease offer.

Appellant requests that its offer be reinstated with priority from the date of disclosing that the required corporate information previously had been filed in connection with another oil and gas offer. The request may not be granted. Where lands are made available for the simultaneous filing of offers to lease for oil and gas, and where the offer first drawn is properly disqualified for noncompliance with the mandatory regulations, later compliance will not entitle the offer to be reinstated and earn priority from the date of such compliance. The regulations governing simultaneous offers expressly require that if the successful drawee is unqualified to receive a lease, the lands in the numbered leasing unit for which

1/ Since 1971, the redesignation table is included in the annual editions of Chapter II of Title 43 of the Code of Federal Regulations.

such entry card was submitted shall be included in a simultaneous filing drawing procedure to be held during the next or a following month thereafter. 43 CFR 3112.5-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Frederick Fishman, Member

Newton Frishberg, Chairman.

